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Order 2001-10-11



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 23rd day of October, 2001

Served: October 23, 2001

**2001 U.S.-ARGENTINA COMBINATION
SERVICE PROCEEDING**

Docket OST-2001-10198 - 175

ORDER TERMINATING PROCEEDING

Background

Under a November 2000 Exchange of Notes between the U.S. and Argentina, 14 additional frequencies became available for U.S. carrier U.S.-Argentina scheduled combination services. Under the agreement seven of these frequencies could be used beginning April 1, 2001 and seven would be available on December 1, 2001. By Order 2001-1-14, the Department selected Delta Air Lines to serve the Atlanta-Buenos Aires market using the seven weekly frequencies available in April and Continental Airlines to serve the Newark-Buenos Aires market using the frequencies available in December. Subsequently, Continental notified the Department that it would not be able to operate its services on December 1, as authorized, and requested a one-year extension until December 2002 of its required startup date. The other three carriers now serving Argentina--American Airlines, Delta, and United Air Lines--each of which stated that it would use the frequencies for services commencing this December, opposed Continental's request.

By Order 2001-7-12, the Department denied Continental's request, withdrew the seven Continental frequencies, and instituted an expedited carrier selection proceeding to reallocate the frequencies for services beginning this December, calling for any additional applications and evidentiary submissions by July 30 and comments to those submissions by August 6.¹ The

¹ By Order 2001-7-16, the Department denied Continental's petition for reconsideration of Order 2001-7-12.

Department's order made clear that a December start up was critical.² To achieve that start up the Department specifically tailored its evidence request to the particular circumstances presented.³ United, American, and Delta filed applications, additional evidentiary material, and comments in response to the Department's order. All proposed service to Buenos Aires and all committed to beginning service this December.

Subsequent Developments

On September 18, following the events of September 11, the Department requested that the applicants update the record of the proceeding to notify the Department as to whether there were any changes in their service plans with respect to their proposed U.S.-Argentina services. All three applicants filed responses. Continental filed answers to the applicants' responses and the three applicants and Continental filed further responsive pleadings.⁴

All three applicants state that they are prepared to begin service on June 15, 2002, and urge the Department to decide the case now, with a requirement that the selected carrier start service no later than June 15. They argue that each of the carriers has committed to operating its proposed service and that deciding the case now would save the carriers and the Department significant time and costs for processing a new case. Should the Department nonetheless defer action in the case, American suggests that the Department do so only until January 2, 2002, at which time the Department should require each of the applicants to commit to a firm startup date or to withdraw from the case. In this manner, American states that the Department would have sufficient time to complete the case and the selected carrier would be able to commence service by June 15.

Continental opposes the carriers' requests that the Department proceed with this case. Continental maintains that its authorization was withdrawn because it was not going to use the rights when they became available this December. Based on the recent pleadings in this docket, Continental states that none of the applicant carriers is now in a position to use the rights this December. As no carrier is ready to use the rights until 2002, Continental argues that the public interest requires the Department to institute a new proceeding next year that would be open to all carriers seeking to use the rights, including Continental. The current applicants oppose Continental's request, stating that they are prepared to use the rights in June 2002, whereas Continental has not indicated that it would begin service any earlier than December 2002, and thus, that the Department should proceed to decide the case on the existing record.

² Order 2001-7-12 at 5 & 6.

³ Order 2001-7-12, Appendix at 2.

⁴ Some of these pleadings were accompanied by motions for leave to file otherwise unauthorized documents. We will grant the motions.

Decision

We have decided to terminate the *2001 U.S.-Argentina Combination Service Case* in Docket OST-2001-10198. We intend to institute a new proceeding early next year to determine how the available frequencies should be allocated.

This case was instituted to provide for new service in the U.S.-Argentina market this December. Our instituting order indicated that a December start up was critical to participation in this proceeding and all three of the current applicants had committed to using the rights at that time. However, the most recent pleadings show that no party would start new U.S.-Argentina service in December, or, for that matter, until June 2002 at the earliest, if selected. Against this background, we have decided to terminate the captioned proceeding. We intend to institute a new proceeding early next year that would entertain applications from all interested carriers for allocation of the seven weekly frequencies.

ACCORDINGLY,

1. We terminate the *2001 U.S.-Argentina Combination Service Case* in Docket OST-2001-10198;
2. We grant all motions for leave to file otherwise unauthorized documents in this proceeding; and
3. We will serve this order on all parties to this docket; the Ambassador of Argentina in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

SUSAN McDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

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